THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITIONS Nos. 11735 OF 2004; 19298 OF 2005 &
24833 OF 2005

W.P.No. 11735/04:

Between:

The Depot Manager,
APSRTC, Ibrahimpatnam Depot.

... PETITIONER

And:

T.Dyvadeenam s/o John,
Ibrahimpatnam and Another

... RESPONDENTS

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITIONS Nos. 11735 OF 2004; 19298 OF 2005 &
24833 OF 2005

ORAL ORDER:

Heard Sri V. Mallik, learned counsel for the 1st respondent and Sri V.T.M.Prasad, learned Standing Counsel for the employer. Since the basis for these three writ petitions is the award of the Industrial Tribunal-II, Hyderabad, the three writ petitions are disposed of by this common order. Parties are referred to as arrayed in W.P.No. 11735/05.

Facts:-

The 1st respondent was employed as a Depot Clerk

(earning) in the writ petitioner organization – the A.P. State Road Transport Corporation ('APSRTC'). There is some confusion whether there were one charge sheet or two charge sheets. The fact of the matter is however that there were two charges framed against the 1st respondent which read as follows:

> " 1. For having failed to arrange payment of Educational Assistance amount of Rs. 125.00 to Sri M.N.Reddy, E. 251813, S.G. and also failed to arrange payment of Sri M.J. Reddy, E.270472, Driver of his salary for the month of June 1993 so far and also failed to intimate the same to the Officials due to which the amount is mis-appropriated by you which constitutes misconduct under Reg. 28 of (X) of A.P.S.R.T.C. Employees (Conduct) Regulations 1963.
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> 2. For having failed to perform your duties correctly i.e., while making payment it is your duty to verify and identify the correct person while making payment duly obtaining correct person's signature in the payment copy but you have not observed the same and stated that payment has been made by obtaining the signature of the concerned employees which constitutes misconduct under Reg. (ix)(a) of A.P.S.R.T.C. Employees (Conduct) Regulations 1963."

After a process of departmental enquiry by proceedings dt 26.9.1994 the 1st respondent was visited with the penalty of removal from service. He unsuccessfully preferred a departmental appeal and a review, which were rejected by the orders dt 28.7.1994 and 23.12.1994, respectively. Eventually he preferred a claim to the Industrial Tribunal-II, Hyderabad, being ID No. 177 of 1998 u/Sec. 2A(2) of the Industrial Disputes Act 1947 ('the Act'). Initially the claim was laid before Labour Court-III, Hyderabad and was numbered as ID No. 62/95. It was thereafter transferred to the Industrial Tribunal-II and renumbered as ID No. 177/98. By an order dated 5.8.1997 the validity of the domestic enquiry was up held and the claim of the

1st respondent was listed for determination on merits. There were some intermediary litigations between the Management and the 1st respondent with regard to certain orders passed in the Industrial Tribunal, which are not relevant and germane for the purpose of the present *lis*. Eventually by the Award dated 3.3.2004 the Industrial Tribunal concluded that there was no material/record placed before it whatsoever which enabled it to adjudicate upon the 1st respondent's claim as to the invalidity of the domestic inquiry. The Tribunal found and recorded as such that the employer had filed only four documents – (a) proceedings of the Depot Manager, Ibrahimpatnam; (b) proceedings of the Divisional Manager, Hyderabad dt 28.7.94; (c) proceedings of the Regional Manager, Hyderabad City Region, dt 23.12.94 and (d) Xerox copy of the service record of the 1st respondent. The employer failed to file either the inquiry report in which the 1st respondent's guilt of the two charges was concluded or the order of penalty issued on the basis of the inquiry report. In the circumstances, the Tribunal held that the Management had failed to establish that the 1st respondent was guilty of the charges leveled against him.

With regard to the issue as to whether the 1st respondent was entitled to any consequential reliefs, the Tribunal noticed that the 1st respondent had already retired from service on 30.4.2003 on superannuation. In the circumstances and having regard to the earlier conduct of the 1st respondent, the Tribunal declined to grant full back wages for the entire period the 1st respondent was out of service. It granted him back wages only for the period 4.10.1993 to 23.12.1994 – being the date w.e.f. which the 1st respondent was suspended from service till the date the revisional authority rejected the 1st respondent's

revision confirming the order of penalty of removal from service. The Tribunal also granted salary for about 25 days from 5.4.2003 to 30.4.2003 while denying any wages whatsoever for the period from 24.12.1994 to 5.4.2003.

W.P.No. 11735 of 2004:-

Challenging the award in ID No. 177/98 dated 3.3.2004 this writ petition is filed with a request to quash the same.

From the aforementioned facts it is clear that the writ petitioner – Management was utterly negligent in not producing any material before the Industrial Tribunal to enable the Tribunal to adjudicate upon the merits of the 1st respondent's claim. The 1st respondent claimed and challenged the order of his removal from service as confirmed in departmental appeal and revision. For adjudicating upon this claim it was necessary for the Tribunal to have analyzed the inquiry report and the final order imposing the penalty of removal from service on the 1st respondent – 1st respondent. This was for the purpose of ensuring that there was at least some evidence in support of the conclusion as to the guilt of the 1st respondent in respect of the misconduct he was charged with on two separate counts of misconduct. Without even this minimal document on record the Tribunal was handicapped and therefore it rightly came to the conclusion that an adverse inference must be drawn that there was no material to sustain the 1st respondent's guilt in respect of the misconduct he was charged with. The Tribunal did not grant back wages to the 1st respondent and only partly allowed the claim of back wages that too for a limited period of about 14 months i.e., 4.10.1993 to 23.12.1994 and another approximately 25 days from 5.4.2003 to 30.4.2003 (the latter being the date of superannuation of the 1st respondent).

In the circumstances this court finds no error in the application of law or perversity in the exercise of discretion by the Industrial Tribunal, warranting interference with the Award dt 3.3.2004 in ID No. 177 of 1998.

W.P.No. 19298 of 2005:-

In the above factual matrix, aggrieved by the denial of full back wages and with attendant benefits such as increments for the entire period the petitioner – workman is out of service, the workman filed this writ petition.

In so far as the back wages are concerned the Tribunal found that the petitioner was guilty of latches in pursuing his legal remedy as the claim was earlier dismissed for default of the petitioner but was restored later. Accordingly the Tribunal granted back wages only for the period 4.10.1993 to 23.12.1994 being the date of the petitioner's suspension from service pending enquiry till the date of the Departmental revisional order rejecting his revision filed against the order of the appellate authority rejecting the appeal as well and confirming the penalty of removal from service. The Tribunal also granted back wages for the period 5.4.2003 (the date of restoration of the ID) to 30.4.2003 (the date of the workman's superannuation).

It is now a settled principle that grant of back wages on the invalidation of an order of removal from service is not a mater of course. A variety of factors go into a determination as to whether a particular employee is entitled to full back wages on declaration of invalidity of disciplinary proceedings; the financial

impact on the public employer, the impact on the society in general which is the tax payer, the diligence or absence of it with which the employee pursues his remedies, the technical or substantive aspects on which the disciplinary proceedings are invalidated by the courts are some of the factors which go into the determination while adjudicating the employee's right to back wages. In the case on hand the Tribunal clearly and rightly found that the petitioner was guilty of indolence and negligence in pursuing his claim before the Tribunal whereat he at one stage had his claim petition dismissed for his default in prosecuting his claim.

In the aforesaid circumstances this court finds no error in the order of the Industrial Tribunal declining the grant of full back wages to the petitioner for the entire period he was out of service. The impugned award suffers from no infirmity warranting interference.

W.P.No. 24833 of 2005:-

This writ petition is filed by the APSRTC assailing the order of the Industrial Tribunal-II, Hyderabad dated 22.9.2005 in E.P.No. 7 of 2004 in ID No. 177 of 1998.

The anterior facts leading to the institution of E.P.No.7 of 2004 by the 1st respondent before the Industrial Tribunal-II, Hyderabad, have been as stated above. Claiming the execution of the Award in ID No. 177/98 the 1st respondent filed E.P. No.7 of 2004.

Assailing the award, the employer filed W.P.No. 11735 of 2004. This court granted an interim order staying the operation of the award in so far as back wages are concerned while declining stay of Award in so far as the retrial benefits payable to the employee is concerned. The E.P. was allowed by the

order impugned herein.

Except merely filing the writ petition it is neither pleaded nor urged on behalf of the employer-APSRTC as to why the order of the Industrial Tribunal impugned herein is invalid or non-executable. In any event as the substantive writ petition No. 11735 of 2004 filed by the employer-APSRTC against the Award, itself is dismissed herein, the entirety of the Award becomes operational and enforceable and therefore there appears no error in the order of the court below impugned herein.

Result :-

In the result all the three writ petitions are dismissed. No order as to costs.

Dated: 03.04.2006 ----------

Pvsn Justice G. Raghuram